



PUBLIC NOTICE

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PUBLIC SAFETY AND HOMELAND SECURITY BUREAU SEEKS COMMENT ON REQUEST FOR WAIVER FILED BY GARDEN CITY PARK FIRE DISTRICT, NEW YORK TO OPERATE A PUBLIC SAFETY COMMUNICATIONS SYSTEM BY ADDING PART 22 FREQUENCIES FROM 470-512 MHZ BAND

File No. 0003808598

Comment Date: December 3, 2009

Reply Comment Date: December 14, 2009

The Public Safety and Homeland Security Bureau seeks comment on the above-captioned application and waiver request filed on April 15, 2009 by the Garden City Park Fire District, New York (the Fire District).¹ The Fire District requests waiver of Sections 20.9(a)(6), 22.621, 22.623(b) and 22.651 of the Commission's rules² to operate a new public safety communications system using frequencies 476.0625 and 473.1250 MHz in the television (TV) Channels 14 and 15 bands (470-512 MHz).³ The Fire District seeks waiver relief either pursuant to Section 337(c) of the Communications Act of 1934, as amended (the Act),⁴ or in the alternative, pursuant to Section 1.925 of the Commission's rules.⁵

The Fire District states that it "is part of a combined water and fire district" which "comprises one square mile in Nassau County, New York."⁶ The Fire District asserts that "the paid staff of the Water District supplies water to both commercial and residential locations in the District"⁷ and "maintains the infrastructure necessary to provide water to the Garden City Park, including water towers, hydrants, water mains, and pump houses."⁸ The Fire District states that it "is the parent agency to the all-volunteer Garden City Park Fire Department," which consists "of 115 members that provide both fire and

¹ See File No. 0003808598 (filed April 15, 2009, amended June 12, 2009). See also attached Waiver Request, FCCA Analysis of TV Station Protection (TV Waiver), and TSB-88 Analysis Garden City Park FD Locations 1 and 2 (Technical Study).

² 47 C.F.R. §§ 20.9(a)(6), 22.621, 22.623(b), 22.651.

³ See Waiver Request at 2-3, 11.

⁴ 47 U.S.C. § 337(c)

⁵ 47 C.F.R. § 1.925.

⁶ Waiver Request at 1.

⁷ *Id.*

⁸ *Id.*

ambulance services”⁹ that protect “approximately 7,500 residential and commercial addresses and a population of approximately 25,000.”¹⁰ The Fire District states that its volunteers “currently use ‘low band’ (46 MHz) channels through agreements with neighboring fire departments” but continued “[u]se of a shared frequency is untenable because the frequency is overloaded and does not meet the District’s requirements.”¹¹ Furthermore, the Fire District argues that “the current low band channel provides poor in-building coverage and only slightly better street-level coverage.”¹²

The Fire District is seeking to construct a public safety communications system that will use the frequency pair 476.0625/473.1250 MHz to provide better “service[s] to the community,” improve “communications between firefighters, officers, chiefs, and dispatchers,” and provide “greater safety of the Fire District’s firefighters by increasing its ability to communicate with the dispatcher.”¹³ The Fire District seeks waiver relief to use the frequency pair, for public safety communications purposes, because the proposed frequency pair is governed by Part 22 and therefore not generally available for public safety use.¹⁴ Specifically, the Fire District seeks waiver of:

- Section 20.9(a)(6) of the rules, which provides that Part 22 frequencies shall be regulated as a commercial mobile radio service;¹⁵
- Section 22.621 of the rules, which provides that the frequencies are designated for use for paging control operations;¹⁶
- Section 22.623(b) of the rules, which requires that the channels may be assigned in an unpaired configuration only to control base stations in the public mobile service;¹⁷ and
- Section 22.651 of the rules, which designates frequency 473.1250 MHz for trunked mobile service.¹⁸

The Fire District contends that “Commission precedent already has established that there are no channels available for use by public entities in the New York metropolitan area, which includes the geographic area covered by the District.”¹⁹ The Fire District states that “FCCA [Forestry Conservation Communications Association, an FCC-certified frequency coordinator] has analyzed the proposed use of the Frequencies and, by its coordination of the associated application, had indicated that the Fire District’s

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* at 2.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.* at 11-13.

¹⁵ 47 C.F.R. § 20.9(a)(6).

¹⁶ 47 C.F.R. § 22.621.

¹⁷ 47 C.F.R. § 22.623(b).

¹⁸ 47 C.F.R. § 22.651.

¹⁹ Waiver Request at 5.

use of Frequencies satisfies the relevant co-channel and adjacent channel analyses.”²⁰ The Fire District also provides a technical analysis to support its conclusion that “the use of the Frequencies will not interfere with co-channel and adjacent channel users.”²¹

As a part of the analysis under Section 337(c) of the Act, as well as the Commission’s waiver criteria, we also seek comment on whether the 700 MHz public safety band would provide a viable alternative, particularly since the digital television transition date has passed, and in light of the Commission’s actions facilitating a nationwide, interoperable public safety network.²²

We further note that the Commission requires private land mobile radio licensees in 150-174 MHz and 450-512 MHz to transition from 25 kHz to 12.5 kHz technology by no later than January 1, 2013,²³ and that Garden City holds a license in this range that is currently operating in wideband mode. We seek comment on whether the Commission should consider the applicant’s current progress in achieving this requirement or other measures of spectrum efficiency when determining whether or not the public interest supports assigning non-public safety spectrum to a public safety entity under either Section 337(c) of the Act or rule Section 1.925?²⁴

Pursuant to Sections 1.415 and 1.419 of the Commission’s rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this *Public Notice*. All comments and reply comments should reference the subject Waiver Request and the DA number indicated on this *Public Notice*. Comments may be filed: (1) electronically by accessing the applicant’s file number(s) in the Commission’s Universal Service Licensing System (ULS),²⁵ or (2) by filing paper copies.

- Electronic Filers: Pleadings may be submitted electronically as follows:

From the ULS website at <http://wireless.fcc.gov/uls/>, begin the process of submitting a pleading by clicking on the “ULS Pleadings” link in the menu on the lower left side of the ULS web page. The

²⁰ *Id.* at 7-8.

²¹ *Id.* See also File No. 0003808598, attached TV Waiver and Technical Study.

²² See Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, PS Docket No. 06-229; Development of Operational, Technical and Spectrum Requirements for Meeting Federal State and Local Public Safety Communications Requirements through the Year 2010, WT Docket No. 96-86, *Second Report and Order*, 22 FCC Rcd 15289 (2007). See also Service Rules for the 698-746, 747-762 and 777-792 Bands; Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, WT Docket No. 06-150, PS Docket No. 06-229, 23 FCC Rcd 14301 (2008) (*Third Further Notice*); 22 FCC Rcd 8047 (2008) (*Second Further Notice*).

²³ See Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended; Promotion of Spectrum Efficient Technologies on Certain Part 90 Frequencies, *Third Memorandum Opinion and Order and Third Further Notice of Proposed Rule Making and Order*, WT Docket No. 99-87, RM-9332, 19 FCC Rcd 25045 (2004). See also 47 C.F.R. §§ 90.209(b)(5)-(6).

²⁴ See Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended; Promotion of Spectrum Efficient Technologies on Certain Part 90 Frequencies, *Third Memorandum Opinion and Order and Third Further Notice of Proposed Rule Making and Order*, WT Docket No. 99-87, RM-9332, 19 FCC Rcd 25045 (2004). See also 47 C.F.R. §§ 90.209(b)(5)-(6).

²⁵ See “Wireless Telecommunications Bureau Enhances the Commission’s Universal Licensing System to Implement Electronic Filing for Pleadings,” *Public Notice*, 21 FCC Rcd 424 (WTB 2006). See http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-06-125A1.pdf.

link will take you to the “*Pleading Information*” screen for “Non-docketed Pleadings” where you select “Reply” in the drop-down window for the type of pleading and then enter the pleadings filer information. Completion of the contact information is optional. Upon completion of this screen, please note the instructions for the filing: “*Pleadings must be dated and must include a signature, in this instance an electronic signature, and the address and phone number of the signing party.*”²⁶ Click on “CONTINUE”.

The second step is to complete the *File Numbers/Call Signs* screen. Click if the pleading pertains to a File Number or Call Sign and enter the File Number or Call Sign. Please note that you must enter a File Number or Call Sign to continue. If the pleading pertains to multiple applications or licenses, you must enter each File Number or Call Sign as appropriate. After clicking the “SUBMIT” button, the screen will update to show all the File Numbers/Call Signs associated with the pleading. At this time, you may delete selected File Numbers/Call Signs from the page before continuing.

The third step is to complete the *Attach File* screen to attach the pleading document. Use the drop down box to select Pleading or Confidential Pleading. The “BROWSE” button opens a file upload window where you will locate and select your pleading file. The Description field allows you to enter a brief description for the pleading. Click the “ADD ATTACHMENT” button to upload your pleading. You may submit up to thirty files for each pleading but each file must be smaller than 10 MB in size. You also have the opportunity to delete any selected file from the pleading.

Finally, to complete your electronic pleading submission, click on the “SUBMIT PLEADING” button and the *Confirmation* screen will be displayed. The *Confirmation* screen will display your Confirmation Number as well as your entered pleadings information. You may print this page for your records by selecting the Print Page link at the top of the page and have the option of submitting another pleading or returning to the ULS website by selecting a link at the bottom of the page.

The ULS Application and License Search results will display pleadings under the ADMIN tab when a comment or reply comment has been filed. Users can view the pleading by clicking on the link for the specific comment or reply comment in the Description field. The general public will not be able to view confidential pleadings.

For additional information or assistance on how to file a comment or reply comment or other relevant pleading, you may visit the Web at <http://esupport.fcc.gov>. You may also call the FCC ULS Customer Support Center at (877) 480-3201 and select option 2, or (888) 225-5322 and select Option 2, or (717) 338-2888. For TTY, please call (717) 338-2824. Assistance from the FCC ULS Customer Support Center is available between the hours of 8 a.m. to 6:00 p.m. Eastern Time, Monday through Friday (except Federal holidays). To provide quality service and ensure security, all telephone calls to FCC ULS Customer Support Center are recorded.

- Paper Filers: Parties who choose to file by paper must submit an original and four copies of each filing.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission’s Secretary, Office of the Secretary, Federal Communications Commission.

²⁶ See 47 C.F.R. Part 1.

- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE, Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

The application(s), waiver request, and comments and reply comments can be accessed electronically via the Commission's Universal Licensing System, <http://wireless.fcc.gov/uls>. The full text of the Waiver Request, comments and reply comments will be available for inspection and duplication during regular business hours in the FCC Reference Information Center (RIC) of the Consumer and Governmental Affairs Bureau, Federal Communications Commission, 445 12th Street, S.W., Room CY-A257, Washington, DC 20554. Copies may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, S.W., Room CY-B402, Washington, DC 20554. Customers may contact BCPI through its web site, <http://www.bcpweb.com>, by email at fcc@bcpweb.com, by phone at (202) 488-5300 or (800) 378-3160, or by facsimile at (202) 488-5563. For further information regarding the public reference file for this waiver request, contact Lisa Williams, RIC, (202) 418-1352.

Because of the policy implications and potential impact of this proceeding on persons not party to the Application, it is in the public interest to treat this case as a permit-but-disclose proceeding under the *ex parte* rules. See Sections 1.1200(a) and 1.1206 of the Commission's rules, 47 C.F.R. §§ 1.1200(a) and 1.1206. Therefore, subsequent to the release of this *Public Notice, ex parte* presentations that are made with respect to the issues involved in the subject waiver request will be allowed, but must be disclosed in accordance with the requirements of Section 1.1206(b) of the Commission's rules, 47 C.F.R. § 1.1206(b).

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

For further information, contact Mr. David Siehl of the Policy Division, Public Safety and Homeland Security Bureau at (202) 418-1313 (voice), (202) 418-7233 (tty), or via e-mail to David.Siehl@fcc.gov.

By the Deputy Chief, Public Safety and Homeland Security Bureau.

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